

DEPARTMENT OF STATE
WASHINGTON

December 4, 2002

Excellency:

I have the honor to acknowledge the receipt of your Note No. 0098, dated December 4, 2002, with attachments, which reads as follows:

Excellency,

I have the honour to refer to the negotiations that have been underway since 1971 concerning the conclusion of a long term agreement for the conservation of Salmon stocks originating in the Yukon River in Canada and to propose an Agreement between our two Governments comprising the following elements:

1. Pursuant to Article XIII of the Pacific Salmon Treaty, done at Ottawa on 28 January 1985 (hereinafter "the Treaty"), Annex I of the Treaty shall be amended as set out in Attachment A and Annex IV shall be amended by the addition of a new Chapter 8, as set out in Attachment B.
2. The following Articles of the Treaty shall not apply in relation to Annex IV, Chapter 8:

His Excellency

Michael F. Kergin,

Ambassador of Canada.

DIPLOMATIC NOTE

- (a) Article II, paragraphs 7, 8, 18, 19, and 20;
 - (b) Article IV;
 - (c) Article V;
 - (d) Article VII; and
 - (e) Article XIII, paragraph 2.
- 3. Further, with regard to Article XII of the Treaty, for matters related to the Yukon River, the Yukon River Panel shall substitute for the Commission.
 - 4. A Yukon River Salmon Restoration and Enhancement Fund ("the Fund") shall be established in accordance with the terms and conditions set out in Attachment C.
 - 5. The obligations under this Agreement shall be subject to the obtaining of specific legislative authority from the United States Congress for the Fund. Such Congressional action (i.e., authorization and appropriation) lies within the discretion of the U.S. Congress.
 - 6. If in any year the United States does not make an annual contribution as required in Attachment C, until the United States makes such contribution for that year the Parties' obligations under this Agreement shall be suspended.
 - 7. Each Government shall take the necessary steps to implement the obligations under this Agreement consistent with its national laws.
 - 8. If the Treaty is terminated in accordance with Article XV(2) thereof:
 - (a) this Agreement shall be suspended and enter into force under the name "Yukon River Salmon Treaty" upon an exchange of diplomatic notes indicating that the

necessary internal procedures of the Parties for the entry into force of the Yukon River Salmon Treaty have been completed;

- (b) the functions of the Yukon River Panel shall be assumed by a new commission, the "Yukon River Salmon Commission", and the Yukon River Panel shall thereupon cease to exist;
- (c) other provisions of the Treaty, to the extent they apply to the Yukon River, shall remain in effect as part of the Yukon River Salmon Treaty, *mutatis mutandis*; and
- (d) our two Governments shall seek to agree on other measures necessary for the continuation and application of the Yukon River Salmon Treaty.

9. At the end of the third year following its entry into force, and at any time thereafter, either Government may give notice of its intention to terminate this Agreement. The Agreement shall terminate one year following such notification.

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note, with its attachments, which shall be equally authentic in English and French, and your Excellency's affirmative Note in reply shall constitute an Agreement between our two Governments which shall enter into force on the date of your Note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

I have the further honor to inform you that the Government of the United States of America accepts the proposal contained in Your Excellency's Note and to confirm that your Note, with

its attachments, and this Note in reply shall constitute an Agreement between our two Governments, which shall enter into force on the date of this Note.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

Paula Dolan



Washington, December 4, 2002

Note No.0098

Excellency,

I have the honour to refer to the negotiations that have been underway since 1971 concerning the conclusion of a long term agreement for the conservation of salmon stocks originating in the Yukon River in Canada and to propose an Agreement between our two Governments comprising the following elements:

1. Pursuant to Article XIII of the Pacific Salmon Treaty, done at Ottawa on 28 January 1985 (hereinafter "the Treaty"), Annex I of the Treaty shall be amended as set out in Attachment A and Annex IV shall be amended by the addition of a new Chapter 8, as set out in Attachment B.
2. The following Articles of the Treaty shall not apply in relation to Annex IV, Chapter 8:

- (a) Article II, paragraphs 7, 8, 18, 19, and 20;
 - (b) Article IV;
 - (c) Article V;
 - (d) Article VII; and
 - (e) Article XIII, paragraph 2.
-
- 3. Further, with regard to Article XII of the Treaty, for matters related to the Yukon River, the Yukon River Panel shall substitute for the Commission.
 - 4. A Yukon River Salmon Restoration and Enhancement Fund ("the Fund") shall be established in accordance with the terms and conditions set out in Attachment C.
 - 5. The obligations under this Agreement shall be subject to the obtaining of specific legislative authority from the United States Congress for the Fund. Such Congressional action (i.e., authorization and appropriation) lies within the discretion of the U.S. Congress.

6. If in any year the United States does not make an annual contribution as required in Attachment C, until the United States makes such contribution for that year the Parties' obligations under this Agreement shall be suspended.
7. Each Government shall take the necessary steps to implement the obligations under this Agreement consistent with its national laws.
8. If the Treaty is terminated in accordance with Article XV(2) thereof:
 - (a) this Agreement shall be suspended and enter into force under the name "Yukon River Salmon Treaty" upon an exchange of diplomatic notes indicating that the necessary internal procedures of the Parties for the entry into force of the Yukon River Salmon Treaty have been completed;
 - (b) the functions of the Yukon River Panel shall be assumed by a new commission, the "Yukon River Salmon Commission", and the Yukon River Panel shall thereupon cease to exist;
 - (c) other provisions of the Treaty, to the extent they apply to the Yukon River, shall remain in effect as part of the Yukon River Salmon Treaty, *mutatis mutandis*; and

(d) our two Governments shall seek to agree on other measures necessary for the continuation and application of the Yukon River Salmon Treaty.

9. At the end of the third year following its entry into force, and at any time thereafter, either Government may give notice of its intention to terminate this Agreement. The Agreement shall terminate one year following such notification.

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note, with its attachments, which shall be equally authentic in English and French, and your Excellency's affirmative Note in reply shall constitute an Agreement between our two Governments which shall enter into force on the date of your Note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.


Robert G. Thibault

Minister of Fisheries and Oceans

The Honourable Colin L. Powell
Secretary of State
U.S. Department of State
Washington, D.C.

ATTACHMENT A

Amendment to Annex I of the Pacific Salmon Treaty

The Parties agree to add a new paragraph (e) as follows:

"(e) a Yukon River Panel for salmon originating in the Yukon River."

ATTACHMENT B

Amendment to Annex IV of the Pacific Salmon Treaty

The Parties agree to add a new Chapter 8 as follows:

Chapter 8

Yukon River

1. The Parties recognize:
 - (a) the uniqueness of the Yukon River and its salmon fisheries; having as their principal goal to rebuild and conserve stocks and provide benefits to the fisheries of both countries on this river system, which means the maintenance in both countries of viable fisheries on the Yukon River;
 - (b) that subsistence fisheries in Alaska have priority over other fisheries in Alaska;

- (c) that aboriginal fisheries in Yukon have priority over other fisheries in Yukon;
- (d) that salmon stocks originating from the Yukon River in Canada are harvested by fishers of both Canada and the United States and that effective conservation and management of these resources are of mutual interest; and
- (e) that considerable work remains to be done to understand the composition of stocks in the various Yukon River fisheries and to develop effective management techniques based on precautionary management approaches.

Definitions

2. For the purpose of this Chapter:

- (a) "Enhancement" means expanding a wild salmon stock beyond its natural production level;
- (b) "Mainstem Yukon River in Canada" means the Yukon River drainage in Canada, excluding the Porcupine River drainage;

- (c) "Restoration" means returning a wild salmon stock to its natural production level;
- (d) "Yukon" means the Yukon Territory of Canada;
- (e) "Yukon River" means the entire Yukon River drainage in Canada and the United States;
- (f) "Yukon River in Canada" means the entire Yukon River drainage in Canada, including the Porcupine River drainage; and
- (g) "Total Allowable Catch (TAC)" means the total run size of each salmon stock less the agreed spawning escapement objective for that stock.

Application

3. This Chapter applies to salmon originating in the Yukon River.

General

4. Each Party shall designate its management entity responsible for the harvest of salmon referred to in paragraph 3.
5. The Parties shall seek to ensure effective conservation and management of stocks originating in the Yukon River.
6. When a fishery is managed under a guideline harvest range regime:
 - (a) the United States shall manage its fishery with a view to delivering to the Alaska-Yukon border the agreed spawning objective plus the midpoint of the Canadian guideline harvest range; and
 - (b) Canada shall manage its fishery within its guideline harvest range with a view to achieving the agreed spawning escapement objective. In years when the number of salmon reaching the Yukon River mainstream border exceeds the upper end of the Canadian guideline harvest range plus the upper end of the agreed spawning escapement objective, Canada may, subject to paragraph 18, utilise the surplus.

7. The respective management entities shall consult closely and where possible co-ordinate pre-season management planning and in-season responses to run assessments. If it is determined in-season that pre-season management measures agreed to by the Panel are insufficient to achieve agreed spawning escapement objectives, the management entities shall consider taking further conservation measures to meet the escapement objectives.
8. The harvest sharing arrangement for Canadian-origin Mainstem Yukon River chum salmon shall be specified in Appendix 1, as amended from time to time by agreement of the Parties.
9. The harvest sharing arrangement for Canadian-origin Mainstem Yukon River chinook salmon shall be specified in Appendix 2, as amended from time to time by agreement of the Parties.
10. Subject to budgetary limitations, the Parties shall seek to implement the fisheries research and management programs recommended by the Panel on the advice of the Joint Technical Committee (JTC) for co-ordinated management of Yukon River chum and chinook salmon stocks.

11. Notwithstanding paragraph 10, each Party shall seek to implement such research and management programs as may be required to implement this Agreement.
12. The Parties shall maintain efforts to increase the in-river run of Yukon River origin salmon by reducing marine catches and by-catches of Yukon River salmon. They shall further identify, quantify and undertake efforts to reduce these catches and by-catches.

Yukon River Panel

13. Subject to the approval of the Parties, the Yukon River Panel shall make such by-laws and procedural rules for itself as may be necessary for the exercise of its functions and the conduct of its meetings.
14. The Yukon River Panel shall make recommendations to the management entities concerning the conservation and co-ordinated management of salmon originating in the Yukon River in Canada.

15. The respective management entities shall take into account the recommendations of the Yukon River Panel in the adoption of regulations, and shall ensure the enforcement of these regulations. These entities shall exchange annual fishery management plans prior to each season.
16. Based on recommendations of the Joint Technical Committee:
 - (a) the Yukon River Panel may from time to time recommend spawning escapement objectives for implementation by the Parties through their management entities; and
 - (b) the Yukon River Panel may revise the spawning escapement objectives for rebuilt stocks in Appendixes 1 and 2.
17. Each year the Yukon River Panel shall review the performance of the fishery management regimes of both Parties for the preceding season with a view to making recommendations to the respective management entities for improving management performance in order to achieve agreed objectives in future years.

18. For any year when a strong run is anticipated, the Yukon River Panel may recommend a spawning escapement objective greater than the agreed level.
19. If the Panel makes such a recommendation as specified in paragraph 18, the United States will endeavour, for that year, to deliver to the Canadian border on the mainstem Yukon River the number of salmon necessary to meet the spawning escapement objective recommended by the Panel, plus the agreed Canadian harvest share.
20. In any year of a strong run, the United States agrees to consider increasing the border escapement to a level greater than agreed in order to allow a higher spawning escapement for that year.

Joint Technical Committee

21. The Parties shall maintain the Yukon River Joint Technical Committee (JTC) established by paragraph C.2 of the Memorandum of Understanding regarding the Treaty, done at Ottawa 28 January 1985, which shall continue to report to the Yukon River Panel. The JTC shall meet annually or more frequently at the direction of the Yukon River Panel to, *inter alia*:

- (a) assemble and refine information on migratory patterns and the extent of exploitation in fisheries harvesting Yukon River origin salmon;
- (b) review existing assessment techniques and investigate new ways for determining total return and escapement and make recommendations on optimum spawning escapement objectives;
- (c) examine past and current management regimes and recommend how they may be better formulated to achieve escapement objectives;
- (d) exchange information on existing and proposed restoration and enhancement programs, identify restoration and enhancement opportunities and evaluate the management consequences of harvests of restored or enhanced fish;
- (e) develop and recommend restoration and enhancement programs to be funded by the Yukon River Salmon Restoration and Enhancement Fund;
- (f) monitor and co-ordinate agreed research programs and recommend research required in order of priority to enable the Parties to effectively implement this Chapter;

- (g) evaluate annually the status of Canadian origin chum and chinook salmon stocks and make recommendations for adjustments to the rebuilding programs set out in this Chapter;
- (h) annually, no later than 30 April, provide the Panel with run outlooks and proposed in-season management strategies designed to achieve escapement objectives and agreed harvest shares of Canadian-origin salmon stocks;
- (i) use existing procedures and investigate new ways to evaluate progress in rebuilding salmon stocks where necessary;
- (j) investigate and recommend stock separation studies that would assist in developing specific fishery management programs for individual salmon stocks;
- (k) review and analyse the effectiveness of alternative fishery regulatory measures to satisfy conservation objectives;

- (l) submit an annual report to the Yukon River Panel on fishery performance, including harvests and fishing effort of all user groups, fish values made available by either side and biological status of stocks;
- (m) review information available on coho salmon originating in the Yukon River, and undertake assessments of such stocks;
- (n) report on the condition of salmon habitat and recommend measures to be taken to protect or enhance salmon habitat;
- (o) when appropriate, provide an evaluation of the ecological and genetic risks of restoration or enhancement, socio-economic impacts, and identify alternative actions including but not restricted to fishery management actions;
- (p) recommend levels for restored stocks consistent with natural habitat capacity; and
- (q) undertake other assignments as may be requested from time to time by the Yukon River Panel.

Rebuilding Mainstem Yukon River Chum and Chinook Stocks

22. With respect to chum and chinook salmon originating in the Yukon River in Canada, when spawning escapements fall below target levels for rebuilt stocks as specified in Appendices 1 and 2 to Chapter 8, Annex IV, upon recommendation of the Yukon River Panel, the Parties shall, through their respective management entities, implement a brood year rebuilding program for the Canadian mainstem stocks. The objective of the rebuilding plan shall be to systematically, as per paragraph 23 below, rebuild the spawning escapement in subsequent return years to the escapement objectives specified from time to time in Appendix 1 for chum and in Appendix 2 for chinook salmon.

23. The rebuilding program shall take into account the relative health of the brood years with the object of rebuilding stronger brood years in one cycle and weaker brood years in no more than three cycles in equal increments. For greater certainty, a cycle for chum salmon is typically considered to be four years, and for chinook salmon, six years, although the Panel may incorporate other age components in designing rebuilding programs.

24. Based on the recommendations of the JTC, the Yukon River Panel shall establish and modify as necessary interim escapement objectives of the rebuilding program.

Porcupine River

25. To ensure maximum benefits accrue to Porcupine River spawning escapements, the Parties shall:

- (a) not initiate new fisheries on Canadian-origin stocks within the Porcupine River drainage before December 31, 2006; and
- (b) following this period, any Party that intends to initiate a new fishery on the Porcupine River shall inform the Yukon River Panel, which shall recommend conservation and management measures.

26. With respect to the Fishing Branch River chum salmon, the Parties agree that when spawning escapements fall below target levels for this stock as specified in Appendix 1 to Attachment B, the Yukon River Panel shall consider the need to develop a rebuilding plan based on information and analysis from the JTC. If the Yukon River Panel decides that such a plan is needed, it shall request the JTC to prepare a range of rebuilding plan options, including allowing this stock to rebuild as a result of the rebuilding program for the Yukon River Mainstem fall chum salmon stock. The Panel shall determine which plan to recommend to the respective management entities.
27. The Parties shall, through their respective management entities, implement the rebuilding plan.
28. Following rebuilding, the Yukon River Panel may recommend catch shares for the Canadian-origin Porcupine River chum salmon stocks.
29. If sufficient information becomes available for chinook and coho salmon stocks originating in the Porcupine River in Canada, the Panel, upon recommendation of the JTC, shall develop a conservation and management program for these stocks.

Habitat

30. In light of the benefits they receive from the salmon originating in their portions of the Yukon River, the Parties agree that:
- (a) salmon should be afforded unobstructed access to and from, and use of, existing migration, spawning and rearing habitats;
 - (b) respective water quality standards should be maintained and enforced;
 - (c) productive capacity of the salmon habitat on both sides of the Alaska-Yukon border should be maintained in order to achieve the objectives of this Chapter; and
 - (d) should access be obstructed, water quality standards be degraded or productive capacity of the salmon habitat be diminished to a degree that affects the objectives established in this Chapter, the Yukon River Panel may recommend corrective actions which may include adjustments to fishing patterns, border escapement objectives and guideline harvest ranges.

Restoration and Enhancement

31. Each Party shall assist the Yukon River Panel in developing and implementing the programs referred to in paragraph 1 of Attachment C and shall, in particular, provide essential support, as required, for programs in its portion of the Yukon River.
32. Unless the Parties jointly decide otherwise, on the basis of recommendations by the Yukon River Panel, the primary objective of:
 - (a) restoration and conservation programs and projects shall be to increase spawning escapements in areas requiring restoration; and
 - (b) enhancement projects shall be to increase harvests taking into account the conservation of wild stocks.
33. Harvest shares for salmon produced by enhancement activities shall be recommended by the Yukon River Panel.
34. The Principles and Guidelines for operation of the Yukon River Restoration and Enhancement Fund are set out in Appendix 1 to Attachment C.

35. Contributions to be made by the United States to the Fund are set out in Appendix 2 to Attachment C.

**APPENDIX 1
TO ATTACHMENT B**

**Escapement Objectives for and Harvest Sharing of
Canadian-Origin Chum Salmon**

1. Subject to paragraph 16 of this Chapter, the Parties agree that the escapement objective for the rebuilt chum salmon stock:
 - (a) in the mainstem Yukon River in Canada shall be greater than 80,000 chum salmon; and
 - (b) upstream from the Fishing Branch River weir site shall be 50,000 to 120,000 chum salmon.
2. Harvest of Mainstem Yukon River chum salmon shall be shared beginning in 2001, and continuing until amended by the Parties, on the following basis:
 - (a) when the Total Allowable Catch (TAC) is between zero and 120,000 chum salmon, the guideline harvest range for Canada shall be between 29% and 35% of the TAC;

- (b) when the TAC is above 120,000 chum salmon, the guideline harvest range shall be between 29% and 35% of 120,000, i.e., 34,800 and 42,000 chum salmon, plus 50% of the portion of the TAC greater than 120,000 chum salmon.

APPENDIX 2
TO ATTACHMENT B

**Escapement Objective for and Harvest Sharing of
Canadian-Origin Yukon River Chinook Salmon**

1. Subject to paragraph 16 of this Chapter, the Parties agree that the spawning escapement objective for the rebuilt chinook salmon stock in the Mainstem Yukon River shall be 33,000 to 43,000 chinook salmon.
2. Harvest of Mainstem Yukon River chinook salmon shall be shared beginning in 2001, and continuing until amended by the Parties, on the following basis:
 - (a) when the Total Allowable Catch (TAC) is between zero and 110,000 chinook salmon, the guideline harvest range for Canada shall be between 20% and 26% of the TAC;
 - (b) when the TAC is above 110,000 chinook salmon, the guideline harvest range for Canada shall be between 20% and 26% of 110,000, i.e., 22,000 and 28,600 chinook salmon, plus 50% of the portion of TAC greater than 110,000 chinook salmon.

ATTACHMENT C

Restoration and Enhancement Fund

1. The Parties hereby establish the Yukon River Salmon Restoration and Enhancement Fund, hereinafter referred to as "the Fund", to be managed by the Yukon River Panel, which shall be used for the following purposes:
 - (a) programs, projects and associated research and management activities on either side of the Alaska-Yukon border directed at the restoration, conservation and enhancement of Canadian origin salmon stocks;
 - (b) programs and projects that are directed at developing stewardship of salmon habitat and resources and maintaining viable salmon fisheries in the Yukon River in Canada.
2. Programs, projects and activities shall be funded based on the Principles and Guidelines set out in Appendix 1 hereto.

3. Subject to the availability of appropriated funds, the United States shall, beginning in U.S. fiscal year 2002, make an annual financial contribution to the Fund, in the amount set out in Appendix 2 hereto. The United States will endeavor to make the contribution in the first quarter of each U.S. fiscal year.
4. If in any year the United States does not make an annual contribution as required in paragraph 3, this Chapter is suspended until the United States makes such contribution for that year.
5. The cost of administering the Fund shall be drawn from the Fund.
6. The Fund shall be open for additional financial contributions from any source.
7. Monies from the Fund shall be disbursed by the Yukon River Panel according to the following rules:

- (a) with regard to paragraphs 1 a) and b), the percentage in Appendix 2 hereto of annual available funds shall be disbursed on Canadian programs and projects approved by the Canadian section of the Yukon River Panel based on recommendations by the Canadian section of the JTC and found by the Yukon River Panel as a whole to be consistent with the Principles and Guidelines set out in Appendix 1 hereto; and
 - (b) the balance of annual available funds shall be disbursed at the direction of the Yukon River Panel as a whole based on recommendations by the JTC as a whole.
- 8. Monies disbursed from the Fund shall be accounted for as directed by the Yukon River Panel.

**APPENDIX 1
TO ATTACHMENT C**

**Principles and Guidelines for
Restoration, Conservation and Enhancement Programs and Projects**

Principles

1. Restoration, conservation and enhancement programs and projects shall be consistent with the protection of existing wild salmon stocks and the habitats upon which they depend.
2. Given the wild nature of the Yukon River and its salmon stocks, and the substantial risks associated with large-scale enhancement through artificial propagation, such enhancement activities are inappropriate at this time.
3. Artificial propagation shall not be used as a substitute for effective fishery regulation, stock and habitat management or protection.

Guidelines

4. The priorities for implementing programs and projects using monies disbursed from the Fund shall be in this order with regard to Attachment C, paragraph 1 a):
 - (1) restoring habitat and wild stocks;
 - (2) conserving habitat and wild stocks;
 - (3) enhancing habitat; and
 - (4) enhancing wild stocks.
5. Programs and projects using monies disbursed from the Fund with regard to Attachment C, paragraph 1 b) shall be limited to:
 - (1) encouraging habitat stewardship, conservation and reclamation in activities and industries that impact salmon and their habitats; and

- (2) maintaining viable salmon fisheries in the Yukon River in Canada, thus establishing incentives for the conservation and stewardship of salmon and their habitats. Funding for commercial salmon fishing and processing shall be limited to the development of infrastructure, capital equipment expenditures and, in years when no commercial processing occurs, the maintenance of processing infrastructure.
6. Programs and projects shall be evaluated by the Yukon River Panel based on a Yukon River basin wide stock rebuilding and restoration plan to be developed and updated periodically by the Panel. As an integral part of restoration, habitat conservation, and enhancement planning the Panel shall undertake careful assessment and inventory of wild stocks, their health, habitat, and life history.
7. The Yukon River Panel shall apply the most stringent of the fish genetics and fish disease policies of the management entity of either Party to restoration or enhancement programs and projects.
8. Following JTC evaluation of proposed programs and projects, each Party shall provide an opportunity for public comment and review of the proposed programs and projects, along with the JTC evaluation.

9. The Yukon River Panel shall decide which programs and projects to fund, based on these guidelines, the JTC evaluation and any public comments received.

APPENDIX 2
TO ATTACHMENT C

U.S. Contributions

1. Subject to the availability of appropriated funds, beginning in U.S. fiscal year 2002, the United States shall contribute 1.2 million USD annually to the Fund until this Appendix is amended by the Parties.
2. The percentage of annually available funds to be made available for projects referred to in paragraph 7 a) of Attachment C shall be 50% until this Appendix is amended by the Parties.